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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,414	07/11/2001	Donald G. Wheatley	3110-000032/CPA	8978

27572 7590 12/11/2002

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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
1772	6

DATE MAILED: 12/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/903,414</b>	Applicant(s) <b>Wheatley et al.</b>	
	Examiner <b>Nasser Ahmad</b>	Art Unit <b>1772</b>	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>three</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
<p>1) <input type="checkbox"/> Responsive to communication(s) filed on _____.</p>			
<p>2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b>.      2b) <input type="checkbox"/> This action is non-final.</p>			
<p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>			
<b>Disposition of Claims</b>			
<p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-5, 7, and 9-42</u> is/are pending in the application.</p>			
<p>4a) Of the above, claim(s) <u>15-22 and 36-42</u> is/are withdrawn from consideration.</p>			
<p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p>			
<p>6) <input checked="" type="checkbox"/> Claim(s) <u>1-5, 7, 9-14, and 23-35</u> is/are rejected.</p>			
<p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p>			
<p>8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.</p>			
<b>Application Papers</b>			
<p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p>			
<p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.</p>			
<p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p>			
<p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner.</p>			
<p style="margin-left: 20px;">If approved, corrected drawings are required in reply to this Office action.</p>			
<p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
<p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p>			
<p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p>			
<p>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</p>			
<p>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p>			
<p>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>*See the attached detailed Office action for a list of the certified copies not received.</p>			
<p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>			
<p>a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p>			
<p>15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>			
<b>Attachment(s)</b>			
<p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p>		<p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p>	
<p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p>		<p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p>	
<p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>4</u></p>		<p>6) <input type="checkbox"/> Other: _____</p>	

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, 7, 9-10, 12-14 and 23-35, drawn to an article, classified in class 428, subclass 40.1.
  - II. Claims 15-22 and 36-42, drawn to a method for reinforcing a structural element, classified in class 156, subclass 60.
2. The inventions are distinct, each from the other because:
3. Inventions group I and group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as one applying the tape directly to the structural element, without using a bonding agent.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Mr. Ryan W. Massey on November 13, 2002 a provisional election was made without traverse to prosecute the invention of group I, claims 1-5, 7, 9-10, 12-14 and 23-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-22 and 36-42 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 7, 9-10, 12-14 and 23-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over English abstract of Japanese: 2000-265141 in view of Saito (5,635,263).

English abstract relates to an adhesive mesh tape having a mesh fabric tape substrate coated with a resin on all or part of its surface. The main surface of the tape substrate is coated with an adhesive. The surface of the tape provides anti-slipping property because the mesh surface as exposed has a roughened surface. However, the English abstract fails to teach that a removable liner is attached to the tape. Saito discloses a reinforcing fiber sheet comprising a carbon-fiber sheet coated or impregnated with epoxy resin and an adhesive layer on one surface. The sheet has a substrate of a release paper. See abstract; col. 2, lines 21-23; col. 3, lines 34-36 and 44-48; and col. 4, lines 7-8. Saito teaches the advantage of using a release liner to provide protection to the exposed surface of the tape. Therefore, it would have been obvious to one having ordinary skill in the art to utilize Saito's teaching of using a release liner for protecting the exposed surface in the invention of the English abstract of Japanese; 2000-265141.

The cross-sectional shape of fibers would have been obvious design choice variation.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 703-308-4424. The examiner can normally be reached on Monday-Thursday from 7:30 am to 5 pm. The examiner can also be reached on alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Nasser Ahmad*  
**NASSER AHMAD**  
**PRIMARY EXAMINER**

N. Ahmad/mn  
December 6, 2002